

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Eligibility for the Specialized )  
Mobile Radio Services and )  
Radio Services in the 220-222 )  
MHz Land Mobile Band and Use of )  
Radio Dispatch Communications )

GN Docket No. 94-90

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REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone companies, Sprint Communications Company L.P., and Sprint Cellular, respectfully replies to Comments filed in response to the August 11, 1994 Notice of Proposed Rule Making ("NPRM").

In the NPRM the Commission sought comment on its tentative decision to eliminate the rule that prohibits wireline telephone common carriers that provide local exchange service ("LECs") from holding SMR licenses. The Commission also proposed eliminating the prohibition on the provision of dispatch service by common carriers.

The vast majority of the commenters joined Sprint in supporting the Commission's proposals. Only SMR WON urged the Commission to continue the prohibition on LECs holding SMR and commercial 220 MHz mobile radio services licenses. SMR WON and

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five other commenters opposed lifting the ban on common carrier provision of dispatch service.<sup>1</sup>

#### WIRELINE ENTRY INTO SMR

SMR WON claims that LECs should not be allowed to hold SMR licenses except if directed by comprehensive federal legislation that also opens the LECs' wireline business to competition. Furthermore, SMR WON claims that the LEC possession of SMR licenses will drive the independent SMRs out of business and, further, that the FCC's safeguards are incapable of preventing competitive abuses by the LECs. Finally, SMR WON tries to bolster its claim by stating:

When Congress passed the Regulatory Parity and auction amendments in August, 1993, included was a provision which gave the Commission permission to review the restriction on wireline entry into SMR. [citing 47 U.S.C. 332(c)(2) (1993)] . . . The FCC was given permission, and nothing more, to review this issue.<sup>2</sup>

SMR WON is mistaken in its assertion that the cited provision refers to LEC ownership of SMR licenses. In fact, the legislation directed the FCC to review the ban on common carrier provision of dispatch and decide whether the ban should be eliminated. SMR WON is also wrong in claiming that there is a

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<sup>1</sup> American Mobile Telecommunications Association, Inc. ("AMTA"), Geotek Communications, Inc. ("Geotek"), E.F. Johnson Company ("E.F. Johnson"), Industrial Telecommunications Association, Inc. and Council of Independent Communications Suppliers ("Joint Commenters"), and the National Association of Business And Educational Radio, Inc. ("NABER") oppose elimination of the ban on common carrier provision of dispatch. Nextel Communications, Inc. agrees that removal of the ban is warranted, but suggests that removal should not be effective until August 10, 1996, the end of the transition period Congress mandated for private carriers that are being reclassified as CMRS providers.

<sup>2</sup> SMR WON at p. 13.

need for further comprehensive legislation. Such comprehensive legislation, the Omnibus Budget Reconciliation Act of 1993 (the "Act"), governing all Commercial Mobile Radio Services, has already been enacted.<sup>3</sup>

The Act directs the Commission "to review its rules and regulations to achieve regulatory parity among [mobile radio] services."<sup>4</sup> Congress clearly articulated the reason for this direction:

The Committee finds that the disparities in the current regulatory scheme could impede the continued growth and development of commercial mobile services . . . .<sup>5</sup>

The instant proceeding is an example of the Commission's review of its rules to achieve regulatory parity among CMRS providers. The ban on LEC ownership of SMR licenses is but one example of the many disparities in mobile radio service regulation that Congress sought to eradicate with the passage of the Act. The ban excludes a potential competitor from the SMR marketplace, creates a separate class of CMRS providers -- SMR license holders -- that are protected from robust competition, and denies the public the continued growth and development of CMRS that Congress envisioned in the Act.

Finally, SMR WON is wrong in its assertion that the Commission's "safeguards" will be incapable of preventing alleged

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<sup>3</sup> Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993) (references to specific sections are herein designated as "Revised Section.")

<sup>4</sup> H.R. Rpt. No. 111, 103rd Cong. 1st Sess. 1193, at 259 ("House Report").

<sup>5</sup> House Report at 259-60.

possible competitive abuses by LECs. The Commission has recently adopted a new rule that will further allay any fears that one entity will have the ability to dominate the CMRS marketplace in any particular geographic area. Newly adopted Commission Rule 20.6(a) prohibits any licensee in broadband PCS, cellular, or SMR services from having an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular, and SMR spectrum where there is significant overlap in any geographic area.<sup>6</sup> This spectrum cap, in addition to the Commission's affiliate transaction and cost accounting safeguards, is sufficient to prevent the LEC competitive abuses that SMR WON alleges are likely.

#### **DISPATCH BAN**

Those commenters that oppose eliminating the ban on common carrier provision of dispatch do so mainly out of concerns of alleged possible competitive abuses. AMTA asserts that:

Many small, more rural SMR operators could face severe adverse consequences should cellular carriers be permitted to provide dispatch services.<sup>7</sup>

SMR WON claims that:

Permitting cellular market power into this segment also would eliminate small operators in the very markets where competition is needed most.<sup>8</sup>

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<sup>6</sup> 47 C.F.R. § 20.6(a) adopted in In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Report and Order, FCC 94-212, released September 23, 1994.

<sup>7</sup> AMTA at p. 10.

<sup>8</sup> SMR WON at p. 18.

These arguments ignore the plain language of the Act and the Legislative History. Revised Section 332(c)(2) states, in pertinent part:

A common carrier . . . shall not provide any dispatch service on any frequency allocated for common carrier service. . . . The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will service the public interest.

In explaining this section, Congress stated:

In addition, this section authorizes the FCC to decide as part of its rulemaking pursuant to section 332(c) whether all common carriers should be able to provide dispatch service.<sup>9</sup>

Clearly, the Commission was not merely given permission to review the dispatch ban; Congress directed it to decide whether the ban should be eliminated. The opposing commenters fail to set forth any justification for maintaining the ban on providing dispatch services. Their comments merely support retention of outmoded rules that will impede the growth and development of CMRS services.

Sprint agrees with the Commission that the ban must be eliminated if true regulatory parity is to be achieved and consumers are to receive the benefits of competition.

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<sup>9</sup> House Report, 1993 WL 181528 (Leg. Hist.) at p. 548 of 1854.


## CONCLUSION

In conclusion, Sprint supports the Commission's proposals. Of the few commenters that oppose the Commission's proposals, none have adduced any compelling arguments that justify continuation of the disparate regulatory scheme that exists today. Accordingly, the Commission should eliminate the SMR, 220 MHz, and dispatch prohibitions.

Respectfully submitted,

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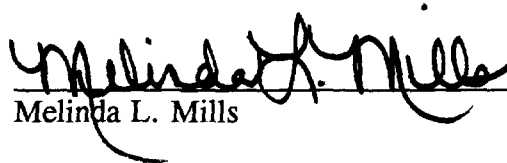
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October 20, 1994

## CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 20th day of October, 1994, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply Comments of Sprint Corporation" in the Matter of Eligibility for the Specialized Mobile Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90 filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

  
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